IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION NO.36090 of 2003

S. Gnanasekaran .. Petitioners
Vs.

1. The District Collector,
Ramanathapuram District
at Ramanathapuram.

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai 104. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorified Mandamus calling for the records of the order passed by the second respondent dated 6.10.2003 in O.A.No.3288 of 2003 and quash the same and further direct the first respondent to include the name of the petitioner in the promotion panel from the year 2000 and promote the petitioner as Tahsildar and fix his seniority above his Juniors with all the attendant service benefits.

For Petitioner : Mr.Shrenkiraj for
Mr.S. James

For Respondents : Mr.V. Raghupathi
Govt. Pleader-R1

O R D E R

(Order of the Corut was made by P.K. MISRA, J)

The petitioner has filed this writ petition for quashing the order dated 6.10.2003 in O.A.No.3288 of 2003 and for further directing the first respondent, namely, the District Collector, Ramanathapuram District, to include the name of the petitioner in the promotion panel for the year 2000 and promote the petitioner as Tahsildar and fix his seniority above his juniors with all attendant service benefits.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

2. The facts giving rise to filing of the present writ petition are as follows :-

The petitioner joined as a Junior Assistant in April, 1985 and in course of time he was promoted to the post of Deputy Tahsildar in December, 1995. Thereafter his service as Deputy Tahsildar was regularised on completion of probationary period and he became eligible for consideration in the empanelment for the post of Tahsildar with effect from 1.7.1998. However, since there was no vacancy, no panel had been prepared in the year 1998. In the meantime, a proceeding had been drawn up against him and a charge memo had been issued under Rule 17(a) of the Tamil Nadu CCS Rues and order had been passed on 11.6.1997 imposing punishment of stoppage of increment for one year without cumulative effect and the appeal filed by the petitioner had also been rejected. Presumably because of such punishment, his name was not considered for empanelment during the year 1999, even though during that year some of his juniors were promoted. The petitioner had made representation dated 20.9.2001, wherein it was indicated that the punishment of stoppage of increment for one year without cumulative effect was over and therefore his name should have been included in the panel prepared for the year 1999. Thereafter, he had filed O.A.No.4240 of 2002, wherein the Tribunal passed an order directing the first respondent, namely, the District Collector, to dispose of the representation dated 20.9.2001. However, the name of the petitioner was not included in the panel for the year 1999 presumably because by then the petitioner has suffered another punishment of stoppage of increment for three months without cumulative effect by order dated 14.11.2000. By order dated 12.7.2002, the petitioner's representation had been rejected by referring to Government Letter No.248 dated 20.10.1998. The present grievance of the petitioner is non-consideration of his name for the year 2000. The crucial date for preparation of the panel for the year 2000 is 1.7.2000. According to the case of the petitioner as on that date no proceeding or charge was pending against the petitioner, his name should have been considered. Subsequently, the petitioner filed O.A.No.3288 of 2003 claiming that his name should be included in the panel for the year 2000. The Tribunal disposed of such application by giving the following directions :-

> "2) The applicant is working as Deputy Tahsildar from 1995 in Ramanathapuram District. The applicant became sufficiently senior enough to get promotion as Tahsildar even in the year 1998. For the year 1998, no panel was prepared because there was no vacancy. In 1999 panel was prepared and notified on 3-6-2000. The name of the applicant was not included in the said panel, because the applicant has suffered a punishment on 11-6-1997 as per which stoppage of increment for the year without cumulative

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

effect was imposed on him. The applicant's increment became due on every October and therefore, the punishment would have been implemented between October 1997 and October 1998. As already pointed out, no panel was prepared for the year 1998. The next panel was prepared and published on 3.6.2000. The name of the applicant ought to have been included in this panel. However, his name has been omitted. In fact, the applicant came and filed O.A.No.4240 of 2002 praying for a direction to consider his representation. Even at that time, the applicant should have agitated his case for inclusion of his name in the panel for the year 1999-2000 by making appropriate pleas and obtaining a decision on merits. But, for reasons best known to himself, he only obtained a direction from this Tribunal to consider the representation made by him. The applicant gave a representation on 20-9-2001 and this was replied to by the respondent in pursuance of the order passed in the above O.A. on 23-9-2002. In the meantime, the applicant has suffered a punishment by the order dated 14-11-2000 as per which again his increment was stopped for a period of three months without cumulative effect.

3) The order is dated 14-11-2000. The applicant has already drawn his increment in October. 2000. His next increment was due only in January 2002. There is no impediment thereafter for his inclusion in the panel for 2001. The panel for 2001 is yet to be published. It seems, the applicant has been subsequently served with a charge memo in 2003. But, it is only under Rule 3(a) and therefore, this cannot be an impediment for inclusion of his name in the panel for the year 2001 because as on 1-7-2001, the applicant is not suffering any punishment and punishments are all over by that time.

4) So, a direction is given to the respondent to consider inclusion of the name of the applicant in the panel for the year 2001-2002 and give him promotion if he is otherwise fit. An order to this effect is passed."

As a matter of fact, pursuant to such order a communication had been served on the petitioner indicating that his name cannot be included for the year 2001. The present writ petition has been filed for quashing the order passed in O.A.No.3288 of 2003 and for issuing a direction to include the name of the petitioner in the panel for the year 2000 for promotion and fix his seniority above his juniors.

3. A counter affidavit has been filed by the first respondent. The assertion in the counter affidavit is to the effect that the name of the petitioner was not included in the panel for the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

year 1999 as a punishment of stoppage of increment for one year without cumulative effect was inflicted and his name had been ignored as per the guideline issued in G.O.Ms.No.368 dated 18.10.1993 and Government Letter No.248 dated 20.10.1997. It was further stated that since there was punishment of stoppage of increment by three months without cumulative effect as per order dated 14.11.2000, it cannot be said that three months period of punishment was over by December, 2000, as contended by the petitioner. While preparing empanelment of the Tahsildar for the year 2000, the petitioner was suffering from punishment and hence as per the guidelines in G.O.Ms.No.368 dated 18.10.1993 and Government Letter No.248 dated 20.10.1997 his name was not taken into consideration and such non-inclusion was intimated to the petitioner. It has been further indicated that for the subsequent years, namely, 2001, 2002 and 2003 nil list had been drawn as there was no vacancy. It has been further indicated that subsequently the petitioner has been charge-sheeted under Rule 17(a) of T.N. Civil Services (D&A) Rules as per R.O.C.No.A5/41543/2003 dated 12.6.2003 for the slackness shown in the duty. The other contentions of the petitioner were generally denied.

4. The denial of promotion to the petitioner for the relevant year 1999 and particularly for the year 2000 is on the basis of G.O.Ms.No.368 dated 18.10.1993 and the subsequent Government Letter No.248 dated 20.10.1997. It is necessary to extract the relevant provisions contained in such G.O.

G.O.Ms.No.368 consists of several parts. Part (iv) of Para II relates to consideration of persons against whom enquiries are pending and specific charges are framed or chargesheet has been filed in criminal case. The relevant paragraphs are quoted hereunder :-

> "(1) As per orders in the Government Order sixth read above, in the case of pending enquiries including vigilance enquiries and in cases where specific charges have not been framed, promotions and appointments shall be considered on the basis of the performance of the officers coming under the Zone of selection as on the date of consideration for promotion/appointment as revealed through the Personal Files/Record Sheets and the seriousness of the punishments, if any previously imposed. In case where specific charges have been framed or charge sheet has been filed in criminal case, promotion/appointment of such persons shall be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable with reference to all relevant criterion, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(2) The "specific charges" referred to are those framed under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules or its equivalent. Mere calling for the explanation of a Government Servant under Rule 17(a) of the said rules need not be treated as a bar for promotion on that score alone. This would equally apply to promotion to ordinary posts and 'Selection Category' posts, as well as to recruitment by transfer from one service to another.

(3) The case of a Government Servant, whose promotion, etc., has been deferred, should be reopened after disposal of the charges and appropriate orders should be passed on merits, i.e., (a) giving him his promotion as aforesaid if he was proved innocent and exonerated or acquitted of the charges and if there are no other adverse factors to be reckoned; or (b) denying him the promotion or giving him the promotion from a later date depending upon the nature of punishment and other factors to be reckoned, in other cases. In all such cases, the Heads of Department must take suo-motu action within 15 days from the date of issue of final orders in the departmental disciplinary case/criminal case.

(4) Wherever the disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules against Government Employees are merely stayed by a Court/Tribunal, their cases shall be deferred till the proceedings are concluded, unless a contrary order is passed by the Court/Tribunal and it is decided not to challenge the same. If on the other hand, the Court/Tribunal quashes the charge memo, then the name of the Government employee concerned should be considered for inclusion in the panel for appointment to

the higher post by promotion/recruitment by transfer if he is otherwise qualified.

(5) If specific charges are framed or charge sheet is filed in the criminal case before actual promotion, the person concerned shall not be promoted notwithstanding the fact that his name has been included in the panel. The instructions in para (3) above will apply in his case thereafter."

5. Part (vi) of para II relates to effect of punishment on promotion / recruitment by transfer. Clause (1) of this part

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

indicates that the effect of a punishment on promotion/recruitment by transfer would depend upon

(a) the nature of the higher post i.e., whether it is a selection category or an ordinary post,
(b) the period during which the irregularity took place, and
(c) the nature of the irregularities.

Since the present case can be considered as question of promotion not of selection category, sub-clause (c) of clause (2) contained in para (vi) is relevant and is extracted hereunder :-

> "(c) For ordinary promotions, the fitness of the person with reference to all relevant factors has to be considered. The unfit persons have to be eliminated. As far as punishments are concerned, (except where a specific punishment of withholding of promotion for a specified period is awarded), it should be examined whether the proved irregularities took place within the specified period of service taken up for analysis and whether the irregularities were such as to make the individual unfit for the job in the higher category in the year in which his case is considered for inclusion in the panel for appointment to the higher post by promotion/by recruitment by transfer."

6. Letter Ms.No.248 dated 20.10.1997 was also relied upon by the Department. Such letter was issued in continuation of the guidelines issued in para II(iv), (v) and (vi) of G.O.Ms.No.368 dated 18.10.1993 and in supersession of the guidelines issued in Letter No.27336/S/96-1 dated 28.6.1996. With a view to clarify the position relating to question of promotion, it was specifically indicated:-

> "... The Government further direct that they should be read with the existing guidelines issued in G.O.Ms.No.368, Personnel & Administrative Reforms (S) Dept., dt.18.10.93 and not in isolation, uniformly in all cases without giving room for difference in norms from one department to another."

WEB COPY

While considering the effect of pendency of vigilance enquiry and charges on inclusion in a panel for promotion and recruitment by transfer, it had been indicated as under:-

https://hcservices.ecourts.gov.in/hcservices/

Sl.No.	Nature of Enquiry/Charges	Effect
6.	Pendency of charges framed under Rule 17(a) of T.N. Civil Services (D&A) Rules	Need not be held against the Officer, irrespective of the seriousness of the delinquency
7.	Pendency of charges framed under Rule 17(b) of T.N. Civil Services (D&A) Rules	It should be held against the officer and inclusion deferred until finalisation of the disciplinary proceedings.

II. EFFECT OF PUNISHMENT ON INCLSUION IN THE PANEL.

...

(2) Any punishment, other than 'Censure' imposed on an Officer within a period of five years prior to the crucial date and punishment of 'Censure within a period of one year prior to the crucial date should be held against the officer. In such a case the officer's name should be passed over.

Provided that if the Officer was imposed with any of the punishments within the check period as mentioned above for irregularities / delinquencies which occurred five years prior to the date of punishment, such punishment need not be held against him.

Provided that an Officer passed over once, need not be passed over for the second time on account of the same punishment at the time of subsequent consideration for the next panel.

3) CURRENCY OF PUNISHMENT :

Whenever an Officer is undergoing a punishment and there is currency of punishment on the crucial date the name should be passed over at the time of first consideration irrespective of the time of occurrence of irregularity. If the currency of that punishment continues at the time of subsequent consideration for the next panel, then the name may be included in the panel, on the basis that a memo should not be passed over for the second time on account of the same punishment.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4) It is further clarified that charges framed under Rule 17(b) of Tamil Nadu Civil Services (D&A) Rules and any of the punishment awarded after the crucial date of issue of the panel shall also be taken into consideration for assessing the suitability of the Officer for inclusion in the panel."

7. In the present case, the currency of punishment, which was inflicted in the year 1997, was obviously over while the question of considering the panel for the year 2000 had arisen. In other words, as on July, 2000, it cannot be said that there was any currency of punishment so far as the petitioner was concerned. Therefore, the principle laid down in G.O.Ms.No.368 that a person should not be considered for promotion during the currency of punishment was not applicable. Similarly, the petitioner having already been overlooked in the year 1999 because of such punishment, he could not be overlooked again for the year 2000. The relevant period for consideration was July 1st, 2000. At that time he was not chargesheeted or charges under Rule 17(b) are pending. Therefore, he was eligible to be considered for the panel of the year 2000 which was expected to be prepared keeping in view the facts and circumstances available on or before July, 2000. The fact that the petitioner was subsequently inflicted with insignificant punishment of stoppage of increment for three months without cumulative effect, which accidentally happened during the period when the panel was actually taken up for consideration, could not be a ground to exclude the name of the petitioner, if he was otherwise eligible as per the relevant provisions. Thereafter, at the time of effecting the actual promotion if he was undergoing any punishment that could have been a relevant consideration, but apparently that was not so in the present case. From the subsequent letter of the Government, it is apparent that mere pendency of the proceedings under Rule 17(a) is not considered as a bar for including the name in the panel. Since on the crucial date i.e., 1.7.2000, no proceeding under Rule 17(b) or no chargesheet in any criminal case is pending nor any punishment in any departmental proceedings had been inflicted, the name should have been considered and merely because the panel was to be prepared on a subsequent date and a charge was pending or a punishment has been imposed on such date, his name should not have been ignored. However, even in such a case where the name is included in the panel, as per clause (2) of G.O.Ms.No.368 and particularly sub-clause (5), the effect of such punishment is required to be considered in accordance with clause 2 of the said G.O.Ms.No.368.

8. So far as the effect of minor punishment in the present case is concerned, the promotion is admittedly "an ordinary promotion" as distinguished from a selection promotion. Such ordinary promotion is to be effected on the fitness of the person and by keeping in view the seniority and the consideration is in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

accordance with sub-clause (c)of clause (vi)(2) of G.O.Ms.No.368. In other words, by applying such stand, the authorities are required to consider the seriousness of the allegation and to examine whether the irregularities took place within the specified period and the nature of the irregularity is such so as to make the individual unfit for job to the higher category. The subsequent letter dated 20.10.1997 has to be read along with G.O.Ms.No.368 and, therefore, the principle emphasised in clause (iv) of G.O.Ms.No.368 should be kept in view while considering the effect of punishment.

9. It is apparent that in the present case the name of the petitioner was ignored simply because of infliction of punishment on a subsequent date after the crucial date for consideration, i.e., July, 2000, and without taking into account the effect of sub-clause (c) of clause(vi) of G.O.Ms.No.368 as well the letter dated 20.10.1997. In the present case, the authorities have ignored the name of the petitioner without keeping in view all the relevant facts and circumstances.

10. In such view of the matter, we modify the order passed by the Tribunal and direct that the authority should consider the question of promotion of the petitioner for the year 2000 by taking into account the relevant facts and circumstances available on the crucial date for preparation of the panel i.e., 1.7.2000. If it is found that the petitioner's name should have been included in the panel, then, his case for promotion should be considered with effect from the date of which his junior was promoted on the basis of empanelment for the year 2000.

Subject to the aforesaid observation and to the extent indicated above, the writ petition is allowed. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

TO

Sub Asst.Registrar

1. The District Collector,
   Ramanathapuram District
   at Ramanathapuram.
2. The Deputy Registrar (Writs),
   High Court, Chennai-104.

ONE CC TO MR.S. JAMES, ADVOCATE (SR 4693)
ONE CC TO THE G.P., SR 4567

ORDER IN WP.36090/2003

VC(CO), BP/18

03.02.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/